96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 96-425

GENERAL ACCOUNTING OFFICE ACT OF 1979

SEPTEMBER 11, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 24]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Operations, to whom was referred the bill (H.R. 24) to improve budget management and expenditure control by revising certain provisions relating to the Comptroller General and the Inspectors General of the Departments of Energy and Health, Education, and Welfare, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the introduced bill and inserts a new text which appears in italic type in the reported bill.

SUMMARY AND PURPOSE

This legislation is intended to strengthen the General Accounting Office's ability to discharge its functions as an investigative and auditing arm of the Congress. The GAO, headed by the Comptroller General, is a principal means by which the legislative branch conducts oversight of executive branch programs and expenditures. Congress relies both on the GAO and on the Comptroller General to insure that (1) funds are used for their intended purposes, (2) agency resources are managed efficiently and economically, and (3) programs are achieving the objectives set forth by the law.

H.R. 24 is designed to improve GAO's effectiveness in carrying out these responsibilities. First, it provides GAO with authority to audit most unvouchered expenditures, those expenditures which are authorized by law to be accounted for solely on the signature of the President or other designated officials. Second, it strengthens GAO's existing authority to enforce its statutory right of access to records of Federal agencies as well as non-Federal entities such as government con-

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tractors and grantees. Third, it makes changes in GAO's report issuance procedure in order to improve the timeliness and accuracy of such reports. Fourth, H.R. 24 provides a formal mechanism for Congressional input in the appointment of future Comptrollers General and their Deputies. It would establish a commission of named Congressional leaders to submit to the President their recommendations for potential nominees to those offices. Finally, H.R. 24 amends the auditing authority of the Inspectors General of the Departments of Health, Education, and Welfare and Energy to conform to the auditing authority provided in the Inspector General Act of 1978.

A similar bill, H.R. 12171, was introduced in the 95th Congress. It was unanimously approved by the Subcommittee on Legislation and National Security and the full Committee on Government Operations and it passed the House by voice vote. However, it failed to gain Senate consideration prior to adjournment. H.R. 24 incorporates many of the provisions of last year's bill and contains several new provisions.

Committee Vote

H.R. 24 was reported by a unanimous 33 to zero roll call vote with a quorum present.

Hearings

Hearings on H.R. 24 were held by the Subcommittee on Legislation and National Security on June 19, 1979. Testimony was received from the Comptroller General of the United States and the Director of the Office of Management and Budget.

DISCUSSION

Background

With the growth in the number of Federal programs and agencies, the Congress has by necessity become more dependent on GAO assistance in fulfilling Congressional oversight and legislative responsibilities. In performing this mandate, the GAO not only provides Congress with essential information about Federal programs, but, uniquely, exercises statutory authority to participate directly in the oversight process as an independent Congressional entity. In effect, it represents the Congress by carrying out important oversight responsibilities for it. The broad spectrum of emerging problems and the complex issues of economic, social, military and political significance facing the Congress, has led to a refocusing of GAO's attention from the traditional finance and accounting activities to assessments of the economy, efficiency and effectiveness of agency and program management and operation.

While hundreds of statutory provisions form the basis for GAO's authority to perform this increasing responsibility, the Budget and Accounting Act of 1921 provides sufficiently broad and comprehensive authority to investigate ". . . all matters relating to the receipt, disbursement, and application of public funds. . . ." This authority extends not only to accounting and financial auditing but also to related aspects of administration, operations and program evaluation. Succeeding legislation affecting GAO's authority generally has served to make mandatory, explicit and emphatic the requirement for GAO to assess the efficiency, economy and effectiveness of program operation by the executive branch. These legislative efforts are represented by

the Budget and Accounting Procedures Act of 1950, The Legislative Reorganization Acts of 1946 and 1970, and the Congressional Budget and Impoundment Control Act of 1974.

Congress has moved in recent years to assume greater leadership in establishing national policy and has found it necessary to increase its direction and control over executive branch expenditures as a means of promoting a sound Federal budget and a healthy economy. This cannot be done effectively without increased oversight by the Congress with the assistance of the GAO. It is essential that GAO in carrying out these responsibilities be given the proper support and direction to ensure its responsiveness to the Congress.

The following provisions of H.R. 24 are designed to achieve this objective.

GAO AUDIT OF UNVOUCHERED EXPENDITURES

Generally, GAO's audit authority extends to all expenditures of the various departments and establishments. However, exceptions are provided by law, including a fairly substantial numbers of "unvouchered" or confidential funds which are accounted for solely by the President or head of the department or establishment involved. Section 101 of H.R. 24 grants the Comptroller General the authority to audit such expenditures. Appendix A contains a listing of examples of agencies with unvouchered accounts.

Certain of these unvouchered fund authorizations already have been the subject of Congressional scrutiny. Public Law 95–570, the White House Authorization Act, allows the Comptroller General to inspect all necessary books, documents, papers, and records relating to expenditures in certificate accounts for the care and maintenance expenses of the Executive Mansion and the official entertainment expenses of the President. This GAO inspection is solely for the purpose of verifying to Congress that the funds were legitimately expended and to report any expenses that cannot be verified. This bill, like Public Law 95–570, contains provisions designed to safeguard information obtained by GAO in its audits of such expenditures.

The Office of Management and Budget expressed concern over the provisions in section 101 of H.R. 24. While the OMB basically agrees that the Comptroller General should audit virtually every account, they feel that exemptions are needed to protect sensitive information. These exemptions include expenditures by and for (1) Domestic Law Enforcement matters, (2) protective activities of the United States Secret Service, (3) the State Department pertaining to the settlement of unspecified expenses of intercourse with foreign nations, and (4) the Treasury Department for unspecified transactions with foreign governments and certain unspecified Exchange Stabilization Fund transactions.

Since H.R. 24 was introduced earlier this year, many discussions have taken place with officials from the GAO and OMB about these expenditures. From these discussions it was agreed that there was a need to establish procedures to guard against unnecessary disclosure of sensitive information such as the financial transactions of the Exchange Stabilization Fund and expenditures made in the course of a confidential or sensitive law enforcement investigation. As a result, H.R. 24 was amended to include the provision in section 101 which

prohibits the GAO from releasing information it obtains from its audit of unvouchered expenditures to anyone except the President or the head of the agency concerned or, in the case of unresolved discrepancies, to a duly established committee or subcommittee of Congress.

In addition, section 101 contains provisions which permit the President to exempt certain transactions which relate to foreign intelligence or counter-intelligence activities and provides for certain transactions to be reviewed by the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence. This language was not contained in the original version of last year's bill, but a subsequent amendment at the suggestion of the House Select Committee on Intelligence incorporated these provisions. At the time this language was inserted, Chairman Boland stated that this amendment "fully satisfies the security concerns of the Permanent Select Committee on Intelligence and of the intelligence community as to expenditures which go to the heart of our most sensitive intelligence efforts."

In summary, H.R. 24 provides the flexibility needed to ensure that selected categories of sensitive information are properly safeguarded. It is the Committee's belief that these safeguards adequately address the concerns raised by the aforementioned Departments while at the same time providing for much needed Congressional oversight of these activities.

Enforcement of Access to Records

A principal duty of GAO is to make independent audits of agency operations and programs and to report to the Congress on the manner in which Federal departments and agencies carry out their responsibilties. In establishing GAO, Congress recognized that the Office would require complete access to the records of the Federal agencies. The intent of GAO's enacting legislation is clear on this point. It provides:

> All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment * * *

Despite this clear statutory authority, the GAO has encountered difficulty in obtaining information from executive branch agencies and other organizations in which it has the right of access by law or agreement. This has effectively delayed or made impossible GAO's responsiveness to the Congress in those instances.

In testimony before the Subcommittee on Legislation and National Security, Comptroller General Staats provided an overview of the type of access problems GAO has encountered. Appendix B contains a summary of these problems. At the Federal agency level he indicated that GAO has encountered access problems which were impossible to resolve. More frequently, however, after long and arduous negotiations, a compromise is reached in which GAO is granted some

form of limited access. The length of time such efforts have demanded—at times exceeding five years—has tended to make the efforts of marginal value to the Congress and has resulted in needless and costly expenditures of scarce GAO resources.

For example, the Department of Defense and the service branches continue to resist GAO's full and open access to DOD records. On several occasions DOD has denied GAO access to information which is critical to a GAO investigation even though the Department has never been able to cite any statutory basis for its refusal to grant such access. These denials are more often based on sweeping and general grounds, such as the reports are "internal working papers." On more than one occasion the Air Force has refused to give the GAO copies of certain briefing documents that were prepared in connection with fiscal year budget projections. Such was the case in a recent investigation of a $4 billion Air Force computer acquisition being conducted by the GAO at the request of this Committee. The Air Force's delay in giving GAO this critical documentation has prevented the Committee from completing its investigation in time for the Committee to inform the House of its findings prior to consideration of the DOD Appropriations bill.

Another instance, cited to us by the Honorable Lee Hamilton, Chairman of the Subcommittee on Europe and the Middle East, Committee on Foreign Affairs, concerned an experience the GAO had while attempting to acquire information for the Chairman of the Subcommittee from the State Department. Chairman Hamilton's correspondence appears in Appendix C. The State Department took the official position that GAO has unlimited access to records only in the course of narrow financial audits. Based on this position, the Department refused to provide GAO with relevant data they had requested to complete their on-going investigation. In a memorandum prepared for Mr. Hamilton's Subcommittee by the American Law Division of the Congressional Research Service, also in appendix C, it was stated that GAO's statutory powers of access to State Department records do not differentiate between factual information and materials related to policy formulation and implementation. The memorandum also states that while such materials may be internal policy memoranda, this fact does not automatically disqualify them from coverage. The memorandum indicates that Congress has long viewed the Comptroller General's access authority in the broadest context, allowing him access to information not directly concerned with the expenditure of funds. The CRS memorandum concludes that GAO's ". . . various review and oversight powers are sufficient; what is needed is a way to enforce them."

The GAO has testified that these are not merely ad hoc denials made by lower level officials, but reflect formal agency policy guidelines which serve to undermine GAO's ability to be responsive to the Congress. Unfortunately, this situation will continue to exist until GAO is given an effective remedy to enforce its legal right to access.

Section 102 of H.R. 24 authorizes the Comptroller General to institute judicial enforcement actions to compel production of documents in cases where an executive department or establishment fails to comply with a request for information, books, documents, papers, or records within 20 days following a formal demand. After an additional 20 days notice to the Attorney General, the Comptroller General is

authorized to seek an order in the Federal District Court of the District of Columbia and obtain a judicial order compelling any Federal department or establishment to furnish GAO with the requested material. Further, the Comptroller General is authorized to issue and enforce subpoenas on non-Federal entities, such as contractors, subcontractors, grantees or other recipients of Federal assistance, for materials and documents to which it now has a legal right of access.

This section permits the Comptroller General to be represented by attorneys of his own selection in any action brought under this section. The purpose of this provision is to remedy the potential conflict of interest caused by the Attorney General representing both respondents in a judicial action involving the GAO and a Federal agency. Finally, Section 102 provides that any failure to obey an order of the court under this provision shall be treated by the court as a contempt thereof.

The GAO, while supporting the 20 day "cooling off period" for notice to the Attorney General prior to initiating legal action, suggested that, as a matter of courtesy, the agency head and the Director of OMB also be notified simultaneously with the Attorney General. The Committee has no objection to this suggestion so long as it does not impede GAO's ability to obtain the information it desires in a timely manner.

The Committee emphasizes that the enforcement provisions of H.R. 24 do not expand GAO's existing rights of access concerning either Federal agencies or non-Federal entities. As mentioned earlier, the Budget and Accounting Act of 1921 assigns GAO the right to examine any books, documents, papers, or records of any department or establishment. GAO access to contractor records is also provided by statute. For example, 10 U.S.C. 2313 (Department of Defense negotiated contracts) and 41 U.S.C. 254 (negotiated contracts covered by the Federal Property and Administrative Services Act of 1949) provide access to contractor records. Access to grantee records is provided by numerous statutes such as the Alcohol and Drug Abuse Education Act and the Airport and Airway Development Act of 1970. Concerning non-Federal entities, the GAO has testified that while its existing access rights generally afford it adequate legal basis to accomplish its legislative mandate, it has experienced access problems similar to those encountered with Federal agencies. The need as stated is for a prompt judicial remedy to ensure that those entities with whom GAO deals comply with their statutory or contractual obligations.

At the present there are more than 50 departments and agencies with authority to subpoena records. (See appendix D for a list of agencies having subpoena authority.) On the other hand, subpoena authority has been granted to GAO in only the following areas:

Verification examinations of energy information (42 U.S.C. 6382),

Monitoring and evaluating all Department of Energy functions (Public Law 95–91, section 207; Public Law 93–275, section 12), and

Audits of Social Security Act programs (Public Law 95–142, section 6).

The GAO has reported, that in those areas where it has been given subpoena authority, it has been able to satisfactorily complete its work

without appreciable delays caused by access problems. One of the examples cited by the GAO as an illustration of the success of this approach, is its experience under Title V of the Energy Policy and Conservation Act. Title V grants GAO subpoena authority in the conduct of verification examinations of energy information. Since the enactment of the statute in 1975, GAO has successfully conducted audits of the books and records of 32 energy companies without the need to issue a single subpoena.

The Committee believes that the availability of judicial enforcement provided by H.R. 24 will greatly reduce instances where executive agencies and non-Federal entities refuse GAO access to information thereby enhancing the completeness and timeliness of GAO's work. It is anticipated that such judicial remedy would be used only in those situations where it becomes difficult or impossible otherwise to obtain information from any Federal establishment or non-Federal entity whose records are currently subject to GAO review. As a practical matter, the very existence of such authority should minimize and, over time, virtually eliminate the current conflicts over GAO's access to information. GAO's experience in those areas where it currently has subpoena authority supports this view.

The Departments of Defense and Justice, and the Office of Management and Budget oppose Congress' granting authority to the Comptroller General to enforce requests for information for Federal agencies through judicial process. DOD argues that there is no need for this section because the law clearly authorizes the Comptroller General to obtain necessary information and court decisions have upheld that right. In additon, it is argued that Federal agencies generally cooperate with the Comptroller General in making information available and that disputes can be worked out between them. While this may be true in many cases, GAO has cited numerous examples including those from DOD in which it has encountered flat refusals by agencies to provide access to records as required by statute. In addition to these cases, GAO has testified that agencies frequently permit only limited access to certain data or have imposed restrictions or conditions on the use of the information. This limited access precludes GAO from arriving at unqualified findings, conclusions and recommendations and has forced Congress on many occasions to make decisions on critical issues with less than a complete set of facts and analyses.

The Justice Department's opposition is more nebulous. That agency appears to base its opposition to section 102 on the ground that Congress cannot grant the Comptroller General the authority to have information requests enforced in the courts because that would constitute "execution of the law" which neither the Congress nor the GAO as legislative bodies have the authority to perform. The Department recommends that in "light of this unsettled constitutional question and given the unchartered dimensions of this proposed GAO power," a non-judicial apparatus, such as one recently proposed by OMB, should be established to review and resolve disputes with respect to the production of documents.

The Department's constitutional reservations concerning section 102 are not persuasive. The courts have consistently upheld Congress' right to issue subpoenas in support of its constitutional responsibili-

ties and to have such subpoenas supported in the courts, either through its own efforts or those of others (e.g. the Justice Department) acting as agents of the Congress. Since the General Accounting Office is the investigating arm of the Congress, conferring authority on it under section 102 to subpoena or otherwise seek judicial enforcement of requests for information, merely vests it with the power possessed by Congress. The position taken by the Department itself eventually concedes that a court would probably uphold the constitutionality of such a grant of authority to the Comptroller General provided that such action is in aid of the legislation function of the Congress.

The Committee also finds no merit to the Justice Department's concern over what it refers to as the "unchartered dimensions of this purposed GAO power." As pointed out earlier in this report, section 102 merely provides judicial remedies to assure compliance with GAO's existing rights of access to information and in no way expands or otherwise affects its access rights. Thus, in order to obtain judicial enforcement, GAO would first have to establish a right of access. The agency or other partly would be free to litigate whether the GAO was within the scope of its access authority as well as any other defenses it may wish to asert. Finally, with regard to the Justice Department's preference for OMB's non-judicial remedy, the preponderance of evidence accumulated over the years showing a continuing lack of full cooperation by executive agencies with the GAO weighs heavily against this "solution." In a recent letter to this Committee the Comptroller General addressed this issue in a most poignant manner. He states:

> We do not see how any approach short of a judicial remedy can be expected to succeed. As you know, each of the OMB nonjudicial "remedies" would retain the present result that GAO's access rights are ultimately determined by the executive branch. Apart from their failure to provide any true remedy, the OMB alternatives would drastically curtail GAO's existing statutory access rights.
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> From our viewpoint, it is extremely unlikely that enactment of section 102 would result in frequent litigation. Our overriding concern is to obtain the information necessary for our audit work as quickly and painlessly as possible. We are certainly no more anxious than the executive branch to engage in litigation except as a last resort. If section 102 is enacted, we would continue the approach of seeking informal resolution in the first instance. However, the complexion of the negotiations should change considerably. The availability of a judicial formul would provide a much needed incentive for the agencies to arrive at their positions much more expeditiously and, we hope, to give more objective consideration to the issues. Thus we are confident that resort to the courts will be the exception rather than the rule. If informal resolution is not possible, each side would have the opportunity to seek vindication of its position and, whatever the result, put the matter to rest.
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> The executive agencies contend that the current rather nebulous approach to dealing with GAO access problems has worked well in the past and submit that any problems can be

> dealt with by some reconstituted version of the status quo. Our actual experience, as documented throughout your Committee's consideration of H.R. 24 and prior legislation, demonstrates that this is not the case. We are also convinced that enactment of a judicial remedy would ultimately promote, rather than hinder, better rlaetions between the executive and legislative branches. It would put GAO and the Congress on an equal footing with the executive branch for purposes of informal efforts to resolve access issues. In the case of those access issues that cannot be informally resolved, it would allow resort to the only means for objectively determining such issues between the legislative and executive branches—the courts. We are perfectly willing to take our chances with the courts, and we fail to understand the reluctance of the Justice Department to do so.

The OMB, in testimony before the Subcommittee on Legislation and National Security, voiced concerns similar to those raised by DOD, Treasury, and Justice. The Office goes much further, however, in questioning GAO's basic authorities to review agency operations and programs. By inference they suggest that GAO was assigned authority to audit financial transactions by the Budget and Accounting Act of 1921 and that any expansion beyond that authority should be subject to the approval of the head of the agency being audited. This, of course, conflicts with the clear and succinct wording in GAO's enacting legislation as well as subsequent legislation which not only further defined or reinforced this broad authority, but gave GAO additional authorities and responsibilities as well. It is disturbing to the Committee that OMB as a representative of the President and a benefactor of many GAO reports on agency programs should take such a restrictive and narrow sighted viewpoint. Since H.R. 24 was introduced early this year, the Committee has held extensive discussions with officials of the OMB in hopes of resolving the major objections to the bill. While resolution was reached on several issues, OMB steadfastly maintained this not so subtle attempt to limit congressional oversight of the executive branch. OMB's position in this respect represents by far the best argument for the need for Congress to strengthen GAO's strict oversight of the executive branch.

Availability of Draft Reports

In June, 1978, the Select Committee on Congressional Operations issued a report on the "General Accounting Office Services to Congress—An Assessment" (Report No. 95–1317). The findings of the report stress that considerable concern is evident in the lack of timeliness in providing services to the Congress. This was attributable to (1) executive agencies' lack of responsiveness in providing GAO with data about their operations, and (2) GAO's time required to complete the preparation and review of draft reports, including the time allowed executive agencies to submit comments. The Select Committee report recommended that GAO should make every effort to reduce substantially the delays caused by these factors.

As described earlier in this report, section 102 of H.R. 24 would allow GAO to seek judicial remedy in the courts in those cases where it encountered agency refusal or resistance to provide GAO with data about their operations. The Committee believes that this provision will serve to remedy the first point raised by the Select Committee's review. Concerning the second point, this Committee has for some time been concerned about GAO's draft report processing procedures. The Committee has voiced concerns in the past that GAO's reliance on formal agency comments has contributed greatly to the lack of timeliness of many of GAO's reports. Further, the Committee is concerned that substantial portions of GAO's draft reports are changed as a result of agency comments without explanation to the Congress on why such changes were made. In fact, in most cases these changes are made in such a fashion that the Congress, in viewing the final product, does not know that they have been made.

The Committee has discovered through its oversight work that a good deal more can be accomplished when Congressional committees and GAO work together rather than go their separate ways. We acknowledge and appreciate GAO's recent efforts to synchronize its reviews with special needs of the Congress. A recent case is illustrative of the way GAO can assist the Congress in a timely and constructive manner. During the Committee's consideration of legislation to reauthorize the Office of Federal Procurement Policy (OFPP), GAO supplied extensive background and important insights on OFPP's performance before the Committee held hearings, analyzed the issues, and deliberated our position. As a result of GAO's assistance, this Committee was able to introduce legislation which substantially redirected OFPP's resources toward the much needed reform of the Government's procurement process envisioned in that Agency's original legislation.

Two factors played an important part in GAO's success in supporting the Committee in this effort. First, the Committee was provided an advance copy of a study of OFPP's performance and the status of the recommendations of the Commission on Government Procurement. This study was a draft and had not yet been released by the GAO. Second, GAO completed the report in time to assist Committee deliberations on the bill including comprehensive testimony by the Comptroller General. This timely action could not have been completed had it not been for the fact that GAO requested only informal comments from the executive agency involved. This is a welcome departure from GAO's more traditional methods of obtaining formalized agency positions and losing several months in the process.

The above example is an "exception to the rule" because GAO normally relies heavily on agency comments to put the final "lacquer" on their reports. This is of great concern to the Committee for the following reasons:

(1) There is an increasing danger, as GAO reports grow more controversial, of premature disclosure by the agency either to preempt the Congress or for other self-serving reasons.

(2) GAO and the executive agencies can reach agreements on curative actions and give Congress a fait accompli in the form of a final report. This preempts the full and free exercise of Congress's policy

and oversight responsibilities. Then the Congress must, if it chooses to do so, disagree with the Comptroller General as well as the agency.

(3) There is a danger that GAO's management may rely on agencies to tell it whether GAO audit teams are doing a good job as opposed to the management unit finding out for itself or insisting that audit teams check their facts out as they go.

(4) The process of getting formal comments on GAO reports is undoubtedly an expensive and time consuming endeavor. While not documented, it is certain that considerable resources are devoted by the agencies to respond to draft reports by the GAO. The number in DOD alone must be staggering.

Section 103 of H.R. 24 seeks to improve the timeliness and accuracy of GAO reports by revising procedures governing the release of draft reports and processing of comments made by executive agencies. First, it prohibits submission of draft reports to Federal agencies for periods longer than 30 days unless the Comptroller General makes an exception for specified reasons. Second, it requires that congressionally initiated draft reports be submitted to appropriate Members or committees, if desired, when they are submitted to agencies for comments. Finally, the draft report provisions require that the Comptroller General include in the final version of a GAO report a statement of changes made in its preparation as a result of agency comments and the reason for such changes. While this section does not prohibit the release of formal draft reports for agency comment, it is expected that such procedures would be used very sparingly.

On June 8, 1979, the Comptroller General informed the Committee by letter that he had instituted administrative changes to GAO's prescribed reporting procedures to provide for (1) weekly submissions to the Committee of a list of draft reports sent to agencies for comment, and (2) discussion in final reports of any significant changes from the conclusions and recommendations that were contained in the draft reports submitted to agencies. The Comptroller General believes that these administrative changes, coupled with his recent order limiting the time for agencies to respond to draft reports to 60 days, adequately meet the concerns of the Committee and that there is no reason for legislatively requiring these actions.

The Committee appreciates the Comptroller General's effort to expeditiously meet the Committee's concerns by implementing the above administrative order. However, such administrative actions can be reversed by future management changes at the GAO. Further, these procedural changes do not fully address the concerns raised earlier in this report regarding GAO's excessive reliance on formal agency comments.

As stated earlier, the tendency today in GAO continues to be one of having to justify not obtaining written positions from the agency on draft reports. Further, the agencies themselves have come to expect this privilege and assume it is their right. The Committee believes this situation should be reversed. That is, formal agency comments should be the exception and obtained only when important information cannot be obtained in any other way and such information is deemed to be worth several months delay.

One of the reasons changing this GAO practice will be difficult is simply that it is very convenient for GAO reviewing officials to have

an agency letter to look at in order to check the authenticity of a draft report. But, experience has proven over the last 20 years that too much time is lost first in obtaining the agency's comments and then in answering these comments in the GAO report.

The GAO has matured sufficiently as an audit and investigative agency of the Congress to shed itself of the cumbersome and debilitating formal draft report processing procedures. Further, the Committee believes that GAO personnel possess sufficient expertise and professionalism to conduct independent audits of executive agency operations without having to rely on agency personnel to "correct" their errors. The GAO may need the views of an agency's top level management in order to get a more comprehensive picture of any particular issue. However, these views can be obtained through informal reviews of draft material and face to face meetings with agency operating and policy officials.

In this respect, the Committee fully supports the Comptroller General's newly instituted system for managing jobs (Project Planning and Management Approach) in which he is directing GAO review teams to invest more time in the front end (scoping and planning) of jobs including earlier discussions of issues with agency and congressional officials. This improved management of jobs together with checking out facts during the job and informal reviews of draft material near the end should suffice in achieving a comprehensive understanding of the issues and factual accuracy. GAO still has the opportunity to sit down with agency management officials and outside experts and get directly from them additional perspectives as well as the agency's position on a particular issue. During this kind of informal and free exchange, GAO can learn much more than from a written letter submitted through formal channels.

The agencies, of course, have an opportunity to present their views to the Congress through submission of their response to a GAO report to appropriate committees of the House and the Senate required by the Legislative Reorganization Act of 1970. This statutory procedure is sufficient to ensure that the views of all parties are considered prior to decisionmaking by the Congress. GAO's adherence to this principle will not only improve the timeliness of their reports but support the concept of Congress being the final decision maker in these matters.

APPOINTMENT OF THE COMPTROLLER GENERAL AND THE DEPUTY COMPTROLLER GENERAL

Section 302 of the Budget and Accounting Act, 1921, as amended, now provides for the appointment of the Comptroller General and Deputy Comptroller General by the President, with the advice and consent of the Senate. Section 303 of the act provides 15-year terms for both officials, and specifies the grounds for their removal from office.

Section 104 of H.R. 24 would amend these provisions by establishing a new procedure relating to the appointment of the Comptroller General or Deputy Comptroller General.

In view of the relationship between the Comptroller General and the Congress, the Committee believes it is appropriate that both Houses be given a formal role in the selection. To this end, the bill provides that a Commission, composed of key Congressional officials, develop a

list of not less than five potential nominees to be submitted to the President. The President, within his discretion, may request that additional names be submitted. The Commission would consist of:

The Speaker of the House of Representatives and the President pro tempore of the Senate,

The majority and minority leaders of the House and Senate, and

The Chairman and ranking minority members of the House Committee on Government Operations and the Senate Committee on Governmental Affairs.

The existing provisions of law for appointment of the Comptroller General by the President, with the advice and consent of the Senate, would be preserved.

Although H.R. 24's appointment procedure is somewhat unusual, it is not unprecedented: numerous other statutes place restrictions on the President's power of appointment, in order to advance legislative goals. At the request of the committee, the Congressional Research Service has compiled a list of some of these statutes. Most common are those which require that the President appoint to a position an individual with specified personal or professional qualifications:

Public Law 93–633, the Independent Safety Board Act of 1974, requires that no more than three of the five members of the National Transportation Safety Board be of the same political party, and that at least two be "individuals who have been appointed in the field of accident reconstruction, safety engineering, or transportation safety."

Under Public Law 95–164, the Mine Safety and Health Act of 1977, the President must appoint to the Mine Safety and Health Review Commission members who by reason of training, education, or experience are qualified to carry out the Commission's functions under the Act.

Public Law 95–140 specifies that the President's appointees as Under Secretaries of Defense for Policy and for Research and Engineering shall be civilians, and that a person may not be appointed within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

Other appointment statutes, like section 104 of H.R. 24, provide for the President to select his nominee form a list compiled from another group:

Public Law 92–181, establishing the Federal Farm Credit Board, directs the President, in making appointments to the board, to take into consideration lists of individuals prepared by each voting group in the district in which the vacancy occurs.

Section 7 of the Railroad Retirement Act of 1974, Public Law 93–445, provides that one member of the Railroad Retirement Board must be appointed by the President from recommendations made by representatives of the employees, and one member must be appointed from recommendations of the employers.

In short, section 104 of H.R. 24 enables Congress to provide input into the selection of the Comptroller General and Deputy Comptroller General, reflecting Congress' justifiable interest in the choice of an individual who functions mainly as an agent of Congress. At the same time, the bill's appointment procedure avoids the constitutional objections to legislative participation in the appointment process that have been raised by the executive branch. The President retains the sole authority of nomination, and the Senate retains the role of advice and consent. Inasmuch as the President may request additional names if he finds the Commission's original submissions unacceptable, no absolute limitation is placed on his freedom of choice.

CONFORMING AMENDMENTS WITH RESPECT TO THE INSPECTORS GENERAL OF THE DEPARTMENTS OF ENERGY AND HEALTH, EDUCATION, AND WELFARE

Section 201 of H.R. 24 amends the statutes which created Inspectors General for the Departments of Energy and Health, Education, and Welfare.

When the Inspector General Act of 1978 was passed creating Inspectors General in twelve other Departments and Agencies, it contained the provision specifying that the audit activities of the Inspectors General, created under the Act, should conform to GAO standards. The previous legislation creating the Inspectors General for HEW (Public Law 94–505) and Energy (Public Law 95–91) did not contain this provision.

Section 201 of H.R. 24 would extend this provision of the Inspector General Act to the Inspectors General of the Departments of Energy and Health, Education, and Welfare.

Oversight Findings

A detailed study of the necessity for the legislation was made by the Subcommittee on Legislation and National Security and hearings were held. In addition, the Committee has held a number of hearings in which questions relating to GAO's failure to receive needed information and inability to review unvouchered expenditures have been raised. These issues were explored particularly by the Legislation and National Security Subcommittee in a hearing held on December 10, 1975, entitled "Review of the Powers, Procedures and Policies of the General Accounting Office."

Cost Estimate of the Congressional Budget Office

The cost estimate prepared by the Congressional Budget Office in the following letter:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., July 24, 1979.

Hon. Jack Brooks,
Chairman, Committee on Government Operations, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

H.R. 24, the General Accounting Office Act of 1979, as ordered reported by the House Committee on Government Operations, July 24, 1979.

The bill authorizes the Comptroller General to have access to any information needed to audit all federal expenditures. The bill also amends the Budget and Accounting Act of 1921 to require the President to appoint the Comptroller General from a list of at least five names submitted by a commission of congressional leadership representatives established for the purpose of compiling such list.

Based on this review, it is expected that no significant cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

COMMITTEE ESTIMATE OF COSTS

The Committee accepts the estimate of the CBO that no additional cost to the Government would be incurred as a result of enactment of this bill.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

No new budget authority or tax expenditures are required by this legislation.

INFLATIONARY IMPACT

It is the opinion of this committee that the enactment of this bill will have no inflationary impact on prices or costs in the operation of the national economy.

SECTION-BY-SECTION ANALYSIS

TITLE I—GAO PROVISIONS

Section 101—Unvouchered expenditures

Section 101 adds a new subsection (f) to section 117 of the Accounting and Auditing Act of 1950 to provide GAO with limited authority to audit expenditures accounted for solely on the approval or certificate of the President or an agency official.

Subsection 117(f)(1) affords the Comptroller General access to records and information concerning expenditures permitted to be accounted for solely on approval, authorization, or certificate of the President or an official of a department or establishment,[1] to the extent necessary for the Comptroller General to determine whether the expenditure was actually made and whether it was authorized by law. This access authority would apply notwithstanding any prior statutory provision permitting expenditures to be accounted for solely by certificate, and could be superseded by a subsequent law only in the case of specific repeal or modification.

Subsection 117(f)(2) prohibits any officer or employee of the GAO from disclosing the findings of an audit, or any records or information concerning the audited expenditure, except to the President or head

[1] By the term "establishment" the committee means all organizational entities in the executive branch of the Federal Government.

of the agency concerned or, in the case of unresolved discrepancies, to a duly established committee or subcommittee of the Congress.

Subsection 117(f)(3)(a) provides that nothing in this subsection be construed as affecting the authority contained in section 8(b) of the Central Intelligence Agency Act of 1949, as amended.

Subsection 117(f)(3)(b) allows for the President to exempt from the provisions of paragraph (1) of subsection 117 financial transactions relative to sensitive foreign intelligence or counterintelligence activities.

Subsection 117(f)(3)(c) provides that information concerning financial transactions taken pursuant to section 8(b) of the Central Intelligence Agency Act of 1949, as amended, and information concerning financial transactions exempted from the provisions of paragraph (1) shall be reviewable by the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

Section 102—Enforcement of access to records

Section 102 amends section 313 of the Budget and Accounting Act of 1921, to provide the Comptroller General necessary authority to enforce GAO rights of access to Federal and non-Federal records. The existing paragraph has been designated as subsection (a) and new subsections (b), (c)(1) and (2) have been added to accomplish the following:

Subsection 313(b) provides a procedural remedy to enforce already existing rights by law or agreement of the Comptroller Generel of access to information, books, documents, papers or records, in Government departments or establishments. The subsection permits the Comptroller General to institute a suit after 20 calendar days notice to the Attorney General in the U.S. District Court for the District of Columbia to compel the production of the material, and authorizes him to be represented by attorneys of his own selection. In addition, it authorizes the Attorney General to represent the defendant official in such actions. Any failure to obey a court order under this subsection shall be treated by the court as a contempt thereof.

Subsection (c)(1) authorizes the Comptroller General to sign and issue subpoenas requiring the production of negotiated contract and subcontract records and records of other non-Federal persons or organizations to which he has a right of access by law or agreement. This authority includes books, accounts, and other records of contractors or subcontractors having negotiated Government contracts and of various other non-Federal persons or organizations, most of which have received Federal grants or other financial assistance.

Subsection (c)(2) provides that in case of failure to obey a subpoena, the Comptroller General is authorized to invoke the aid of the appropriate United States district court, through attorneys of his own selection. The district court may issue an order requiring compliance with the subpoena, and any failure to obey such order shall be treated by the court as a contempt thereof.

Section 103—Availability of draft reports

Section 103 adds a new subsection (f) to section 312 of the Budget and Accounting Act of 1921 to provide for better timeliness and accuracy of draft GAO reports.

Subsection 312(f)(1) provides that no portion of any draft report prepared by the GAO shall be submitted to any agency for comment for a period in excess of thirty days unless the Comptroller General determines that a longer period will result in improvement in the accuracy of the report.

Subsection 312(f)(2) states that failure of any agency to comply with subsection (f)(1) shall not result in the delayed delivery of any report.

Subsection 312(f)(3)(a) provides that whenever an agency is requested to comment on a draft report, the Comptroller General shall, in the case of any reports initiated pursuant to subsection (b) of Section 312, or at the request of either House of Congress or any Committee or member, make the draft report available upon request to such House, Committee, or member. Section (f)(3)(b) requires the Comptroller General, in the case of any other report, to make the report available, upon request, to the Senate Committee on Governmental Affairs and to the House Committee on Government Operations.

Section 312(f)(4) requires the Comptroller General, upon issuance of the final version of a report, to prepare and issue a statement of any significant changes in the findings, conclusions, and recommendations which were based on an agency's comments of the draft report, and the reasons for such changes.

Section 104—Appointment of the Comptroller General and the Deputy Comptroller General

Section 104 amends sections 302 and 303 of the Budget and Accounting Act of 1921, to establish a commission to recommend individuals to the President for appointment to the Office of Comptroller General and Deputy Comptroller General. The President, at his discretion, may request additional names. The new subsection 302(a) also provides that the Deputy Comptroller General acts as Comptroller General during the absence or incapacity of the Comptroller General or during (and for the duration of) a vacancy in that office.

Subsection 302(b) provides for the Commission, referred to above, to submit to the President the names of not less than five persons for the Office of Comptroller General and for the Office of Deputy Comptroller General. The Commission will consist of: The Speaker of the House and President pro tempore of the Senate, the majority and minority leaders of each House, and the chairmen and ranking minority members of the House Government Operations Committee and the Senate Governmental Affairs Committee, and, in the case of a vacancy in the Office of Deputy Comptroller General, the Comptroller General of the United States.

The first paragraph of section 303 of the Budget and Accounting Act, which governs the terms of office and removal of the Comptroller General and Deputy Comptroller General, is amended by deleting the references to the Deputy Comptroller General.

Subsection 4(c) of the bill gives prospective effect to the amendments to sections 302 and 303 of the Act. Such amendments do not apply to the Comptroller General and Deputy Comptroller General holding office on the date of enactment.

TITLE II—CONFORMING AMENDMENTS WITH RESPECT TO THE INSPECTORS GENERAL OF THE DEPARTMENT OF ENERGY AND THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Sections 201 and 202 amend the statutes which created the Inspector General for the Department of Energy and the Department of Health, Education, and Welfare.

The Inspector General Act of 1978 specified that audit activities of Inspectors General created under the Act should conform to GAO standards. The Office of Inspector General in the Departments of Energy and Health, Education, and Welfare were created prior to the 1978 Act. Therefore, this bill extends the requirements of the Inspector General Act of 1978 dealing with complying with GAO audit standards to the Inspectors General of the Departments of Energy and Health, Education, and Welfare.

Section 201 amends section 203(b) of Public Law 94–505 in the following manner: Section 203(b)(1) requires the Inspector General of the Department of Health, Education, and Welfare to comply with standards established by the Comptroller General for audits of Federal establishments, programs, activities, etc. 203(b)(2) requires the Inspector General to establish guidelines for determining when to use non-Federal auditors, and 203(b)(3) requires the Inspector General to ensure that work performed by non-Federal auditors complies with standards described in paragraph (1).

Section 202 amends section 208 of Public Law 95–91 by inserting new subsections (h)(1), (h)(2), (h)(3) and (i) and (j). Subsections (h)(1), (h)(2), and (h)(3) require the Inspector General of the Department of Energy to comply with the provisions described above for the Inspector General of the Department of Health, Education, and Welfare. Subsection (i) encourages coordination and cooperation in the activities of the Inspector General and the Comptroller General. Subsection (j) requires the Inspector General to report to the Attorney General whenever reasonable grounds have been established to believe there has been a violation of Federal criminal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 117 OF THE ACCOUNTING AND AUDITING ACT OF 1950

AUDITING PROVISIONS

SEC. 117. (a) * * *

* * * * * * *

(f)(1) Notwithstanding any provision of law heretofore enacted permitting an expenditure to be accounted for solely on the approval, authorization, or certificate of the President of the United States or an official of an executive agency, the Comptroller General shall have access to such books, documents, papers, records, and other informa-

tion relating to such expenditure as may be necessary to enable him to determine whether the expenditure was, in fact, actually made and whether such expenditure was authorized by law. The provisions of this paragraph shall not be superseded except by a provision of law enacted after the date of enactment of this paragraph and specifically repealing or modifying the provisions of this paragraph. In the case of an expenditure under section 102, 103, 105(d) (1), (3), or (5), or 106(b) (2) or (3), of title 3, United States Code, the provisions of sections 102, 103, 105(d), and 106(b) of such title shall govern the examination of such expenditures by the Comptroller General in lieu of the provisions of this subsection.

(2) With respect to any expenditure accounted for solely on the approval, authorization, or certificate of the President of the United States or an official of a department or establishment and notwithstanding any previously enacted provision of law, no officer or employee of the General Accounting Office may release the findings of its audit of such expenditure or disclose any books, documents, papers, records, or other information concerning such expenditure to anyone not an officer or employee of the General Accounting Office, except to the President or the head of the agency concerned or, in the case of unresolved discrepancies, to a duly established committee or subcommittee of the Congress.

(3)(A) Nothing in this subsection shall be construed as affecting the authority contained in section 8(b) of the Central Intelligence Agency Act of 1949, as amended.

(B) The President may exempt from the provisions of paragraph (1) of this subsection financial transactions which relate to sensitive foreign intelligence or foreign counterintelligence activities; such an exemption may be given for a class or category of financial transactions.

(C) Information concerning financial transactions taken pursuant to section 8(b) of the Central Intelligence Agency Act of 1949, as amended, and information concerning financial transactions exempted from the provisions of paragraph (1) shall be reviewable by the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

BUDGET AND ACCOUNTING ACT, 1921

* * * * * * *

TITLE III—GENERAL ACCOUNTING OFFICE

* * * * * * *

[SEC. 302. There shall be in the General Accounting Office a Comptroller General of the United States and an Assistant Comptroller General of the United States, who shall be appointed by the President with the advice and consent of the Senate and shall receive salaries of $42,500 and $40,000 a year respectively. The Assistant Comptroller General shall perform such duties as may be assigned to him by the Comptroller General, and during the absence or incapacity of the Comptroller General, or during a vacancy in the Office, shall act as Comptroller General.]

SEC. 302. (a) There shall be in the General Accounting Office a Comptroller General of the United States and a Deputy Comptroller

General of the United States who shall be appointed by the President by and with the advice and consent of the Senate. The Deputy Comptroller General shall perform such duties as may be assigned to him by the Comptroller General. During the absence or incapacity of the Comptroller General, or during a vacancy in that office, the Deputy Comptroller General shall act as Comptroller General.

(b) Whenever, after the date of enactment of this subsection, a vacancy occurs in the Office of Comptroller General, there is established a commission to recommend individuals to the President for appointment to the Office of Comptroller General and whenever, after such date, a vacancy occurs in the Office of Deputy Comptroller General, there is established a commission to recommend individuals to the President for appointment to the Office of Deputy Comptroller General. Such commission shall in either case consist of—

(1) the Speaker of the House of Representatives,

(2) the President pro tempore of the Senate,

(3) the majority and minority leaders of the House of Representatives and the Senate,

(4) the chairman and ranking minority member of the Committee on Government Operations of the House of Representatives and of the Committee on Government Affairs of the Senate, and

(5) in the case of a vacancy in the office of Deputy Comptroller General, the Comptroller General of the United States.

Such commission shall submit to the President for consideration the names of not less than five persons for the office of Comptroller General. The President, within his discretion, may request that additional names be submitted.

SEC. 303. [Except as hereinafter provided in this section, the Comptroller General and the Assistant Comptroller General shall hold office for fifteen years.] *Except as otherwise provided in this section, the Comptroller General shall hold office for fifteen years and the Deputy Comptroller General shall hold office from the date of appointment until the date on which an individual is appointed to fill a vacancy in the Office of Comptroller General. The Deputy Comptroller General may continue to serve until his successor is appointed.* The Comptroller general shall not be eligible for reappointment. The Comptroller General or the Assistant Comptroller General may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the Comptroller General or Assistant Comptroller General has become permanently incapacitated or has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. Any Comptroller General or Assistant Comptroller General removed in the manner herein provided shall be ineligible for reappointment to that office. When a Comptroller General or Assistant Comptroller General attains the age of seventy years, he shall be retired from his office.

* * * * * * *

SEC. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the

President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committees of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time.

(f)(1) No portion of any draft report prepared by the General Accounting Office shall be submitted to any agency for comment thereon for a period in excess of thirty days unless the Comptroller General determines, upon a showing by such agency, that a longer period is necessary and is likely to result in improvement in the accuracy of such report.

(2) Failure of an agency to return comments by the conclusion of the comment period established under paragraph (1) of this subsection shall not result in the delayed delivery of any such report.

(3) Whenever an agency is requested to comment on a draft report, the Comptroller General shall—

(A) in the case of any report initiated, pursuant to subsection (b) of this section or otherwise, at the request of either House of Congress or by any committee or member thereof, make such draft report available on request to such House, committee, or member; or

(B) in the case of any other report, make such draft report available on request to the Committee on Governmental Affairs of the Senate and to the Committee on Government Operations of the House.

(4) The Comptroller General shall prepare and issue with the final version of any report of the General Accounting Office a statement of (A) any significant changes, from any prior drafts of such report, in the findings, conclusions, or recommendations which were based on an agency's comments on such a draft, and (B) the reasons for making such changes.

SEC. 313. (a) All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them: and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purposes of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

(b) If any information, books, documents, papers, or records requested under subsection (a) or any other provision of law or agreement granting the Comptroller General a right of access from any department or establishment have not been made available to the General Accounting Office within a period of twenty calendar days after the request has been delivered to the office of the head of the department or establishment involved, the Comptroller General, through any attorney designated by him, may, after twenty calendar days notice to the Attorney General, apply to the United States District Court for the District of Columbia for an order requiring the production of such material by the head of the department or establishment. The Attorney General is authorized to represent the defendant official in such proceedings. Any failure to obey an order of the court under this subsection shall be treated by the court as a contempt thereof.

(c)(1) To assist in carrying out his functions, the Comptroller General may sign and issue subpenas requiring the production of contractor and subcontractor records pertaining to negotiated contracts and records of other non-Federal persons or organizations to which he has a right of access by any law or agreement. Service of a subpena issued under this subsection may be made by anyone authorized by the Comptroller General (A) by delivering a copy thereof to the person named therein, or (B) by mailing a copy thereof by certified or registered mail, return receipt requested, addressed to such person at his residence or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service or, in the case of service by certified or registered mail, the return post office receipt signed by the person so served, shall be proof of service.

(2) In case of failure to obey a subpena issued under paragraph (1), the Comptroller General, through any attorney designated by him, may invoke the aid of any district court of the United States in requiring the production of the records involved. Any district court of the United States within whose jurisdiction the contractor, subcontractor, or other non-Federal person or organization is found or resides or in which the contractor, subcontractor, or other non-Federal person or organization transacts business, may, in case of refusal to obey a subpena issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court shall be treated by the court as a contempt thereof.

* * * * * * *

SECTION 203 OF THE ACT OF OCTOBER 15, 1976

AN ACT To authorize conveyance of the interests of the United States in certain lands in Salt Lake County, Utah, to Shriners' Hospitals for Crippled Children, a Colorado corporation.

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TITLE II—OFFICE OF INSPECTOR GENERAL

* * * * * * *

DUTIES AND RESPONSIBILITIES

Sec. 203. (a)

* * *

[(b) In carrying out the responsibilities specified in subsection (a)(1), the Inspector General shall have authority to approve or disapprove the use of outside auditors or to take other appropriate steps to insure the competence and independence of such auditors.]

(b) In carrying out the responsibilities specified in subsection (a)(1), the Inspector General shall—

(1) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(2) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(3) take appropriate steps to assure that any work preformed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

* * * * * * *

SECTION 208 OF THE DEPARTMENT OF ENERGY ORGANIZATION ACT

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

* * * * * * *

OFFICE OF INSPECTOR GENERAL

SEC. 208. (a)(1) * * *

* * * * * * *

(h) In carrying out the responsibilities specified in subsection (b)(1), the Inspector General shall—

(1) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities and functions;

(2) establish guidelines for determining when it shall be appropriated to use non-Federal auditors; and

(3) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(i) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General with a view toward avoiding duplication and insuring effective coordination and cooperation.

(j) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

APPENDIXES

Appendix A.—Examples of Agencies With Unvouchered Accounts

TABLE 1.—UNVOUCHERED EXPENDITURE FUNDS AVAILABLE FOR FISCAL YEAR 1977

Appropriation act	Account	Authority	Amount
Defense (Public Law 94-419)	Contingencies, defense	10 U.S.C. 140	$2,500,000
Do	Operations and maintenance, Army	10 U.S.C. 140	2,929,000
Do	Operations and maintenance, Navy	10 U.S.C. 140	4,462,000
Do	Operations and maintenance, Air Force	10 U.S.C. 140	2,393,000
Do	Operations and maintenance, Defense	10 U.S.C. 140	8,384,000
District of Columbia (Public Law 94-446).	General operating expenses (Mayor)	Public Law 93-140	2,500
Do	General operating expenses (Chairman, District of Columbia Council).	Public Law 93-140	2,500
Do	Public safety (Chief of Police)	Public Law 93-140	200,000
Do	Education (Superintendent of Schools)	Public Law 93-140	1,000
Do	Education (president, Federal City College)	Public Law 93-140	1,000
Do	Education (president, Washington Technical Institute).	Public Law 93-140	1,000
Do	Education (president, District of Columbia Teachers College).	Public Law 93-140	
Foreign assistance [1]	President's special authority	22 U.S.C. 2364(c)	50,000,000
Do	Confidential expenses	22 U.S.C. 2396(a)(8)	50,000
Do	Inspector General, Foreign Assistance	22 U.S.C. 2384(d)(7)	2,000
Do	Peace Corps	22 U.S.C. 2514(d)(7)	5,000
HUD, Space, Science (Public Law 94-378).	National Aeronautics and Space Administration, research and program management.	Public Law 94-307	35,000
Do	National Science Foundation	Public Law 94-471	5,000
Legislative branch (Public Law 94-440).	Contingent expenses of the House, allowances and expenses (American Group of the Interparliamentary Union).	22 U.S.C. 276b	Unspecified.
Do	Contingent expenses of the House, allowances and expenses (Canada-United States Interparliamentary Group).	22 U.S.C. 276g	Unspecified.
State, Justice (Public Law 94-362).	Emergencies in the diplomatic and consular services (State).	31 U.S.C. 107	2,100,000
Do	Salaries and expenses, general legal activities (Justice).		30,000
Do	Federal Bureau of Investigation, salaries and expenses.	28 U.S.C. 537	70,000
Do	Immigration and Naturalization Service, salaries and expenses.	8 U.S.C. 1555	50,000
Do	Drug Enforcement Administration, salaries and expenses.		70,000
Treasury (Public Law 94-363)	Treasury Department, Office of the Secretary, salaries and expenses.		100,000
Do	Compensation of the President	3 U.S.C. 102	50,000
Do	White House Office, salaries and expenses (travel funds).		100,000

[1] The 4 items for foreign assistance derive from the Foreign Assistance Act of 1961, as amended; they do not require specific appropriations each year.

TABLE 2.—UNVOUCHERED EXPENDITURE FUNDS REQUESTED, FISCAL YEAR 1978

Appropriation account	Authority	Amount	Page reference in budget appendix
Compensation of the President	3 U.S.C. 102	$50,000	55
The White House Office, salaries and expenses		100,000	55
Executive residence, operating expenses		(1)	55
Operation and maintenance, Army	10 U.S.C. 140	3,219.000	228
Operation and maintenance, Navy	10 U.S.C. 140	1,507,000	229
Operation and maintenance, Air Force	10 U.S.C. 140	2,538,000	231
Operation and maintenance, Defense agencies	10 U.S.C. 140	3,743,000	232
Contingencies, Defense	10 U.S.C. 140	5,000,000	237
Salaries and expenses, general legal activities (Justice Department)		30,000	485
Federal Bureau of Investigation, salaries and expenses	28 U.S.C. 537	70,000	489
Immigration and Naturalization, salaires and expenses	8 U.S.C. 1555	50,000	481
Drug Enforcement Administration, salaries and expenses		70,000	493
Emergencies in the Diplomatic and Consular Service (State Department).	31 U.S.C. 107	2,600,000	522
Office of the Secretary [of the Treasury], salaries and expenses		100,000	589
National Aeronautics and Space Administration, research and program management.	(2)	35,000	660
National Science Foundation, salaries and expenses	(2)	50,000	775
President's special authority in foreign assistance [3]	22 U.S.C. 2364(c)	50,000,000	----------
Foreign assistance, confidential expenses [3]	22 U.S.C. 2396(a)(8)	50,000	----------
Foreign assistance, Inspector General [3]	22 U.S.C. 2384(d)(7)	2,000	----------
Peace Corps [3]	22 U.S.C. 2514(d)(7)	5,000	----------
District of Columbia, general operating expenses (Mayor) [4]	Public Law 93-140	2,500	----------
District of Columbia, general operating expenses (Chairman, District of Columbia Council) [4].	Public Law 93-140	2,500	----------
District of Columbia, public safety (chief of police) [4]	Public Law 93-140	200,000	----------
District of Columbia, education (superintendent of schools) [4]	Public Law 93-140	1,000	----------
District of Columbia, education (president, Federal City College) [4]	Public Law 93-140	1,000	----------
District of Columbia, education (president, Washington Technical Institute) [4]	Public Law 93-140	1,000	----------
Contingent expenses of the House of Representatives, allowances and expenses (American Group of the Interparliamentary union).	22 U.S.C. 276b	(5)	12
Contingent expenses of the House of Representatives, allowances and expenses (Canada-United States interparliamentary Group).	22 U.S.C. 276g	(5)	12

[1] Request for entire account is $2,157,000 part of which is for "official entertainment expenses of the President to be accounted for solely in his certificate."

[2] Authority is renewed each year in substantive legislation handled by authorization committees.

[3] Derives from the Foreign Assistance Act of 1961, as amended. Does not require specific appropriations each year. The $50,000,000 authority is available over a number of years, until exhausted.

[4] Information on the fiscal 1978 budget is not yet available. These confidential funds were included in the fiscal 1977 budget for the District of Columbia.

[5] Request for the entire account is $54,682,800, part of which may be spent with certificates in accordance with the authorities contained in title 22 of the U.S. Code, sec. 276b and 276g. On the basis of discussions with House and Senate disbursing offices, it appears that these expenditures, in practice, are vouchered.

APPENDIX B

GAO's Overview of Access to Records Experience

On a number of occasions over the years the General Accounting Office has encountered difficulty in obtaining from Executive branch agencies and other organizations records to which we have a right of access by law or agreement. The following recent examples serve to illustrate this problem.

DIFFICULTIES WITH FEDERAL AGENCIES

1. Within the past year, we encountered serious access to records difficulties at the White House in connection with two audits requested by congressional sources. In one case the Chairman of the Subcommittee on Energy and Power of the House Commerce Committee had asked us to review Federal planning efforts in relation to the mid-winter coal strike that occurred during 1977–78. The development and evaluation of unemployment estimates by the Council of Economic Advisers (CEA) was a key aspect of the audit. The White House refused our request for specific CEA records on this matter and we were forced to issue our report without the information. The refusal was said to be based on a Justice Department memorandum challenging our access rights. In fact, the Justice Department memorandum merely suggested that additional study might well provide a basis for the President's invoking "executive privilege" in response to our request. "Executive privilege" was never invoked. Following issuance of our report and on the day before a Subcommittee hearing on the matter, CEA provided most of the records that had previously been denied to us.

The second case invloved a request by Congressman Eldon Rudd that we review whether United States Metric Board members were appointed from segments of the concerned communities as required by statute. Despite repeated followup inquiries, we received no response to our request for access to the necessary records for several months. Finally the White House denied this request on the basis of the same Justice Department memorandum. Thus we were unable to perform the audit. Again the Justice Department suggested a claim of "executive privilege" but, to the best of our knowledge, it was never invoked.

These cases illustrate the full range of our access problems. We encountered long delays in obtaining any response to our access requests. When the responses finally arrived in the form of denial, the legal basis was not articulated. In the Metric Board matter, the response alluded to areas of concern which might have been accommodated, but no serious effort was made to seek an accommodation. In the CEA matter, most of the information was provided after issuance of the report with no explanation as to why it could not have been furnished months earlier.

2. Pursuant to the requests of over 30 Members of Congress we initiated a review of the circumstances surrounding a grant by the Department of Labor to the United Farmworkers of America. Our initial requests for access to agency documents in connection with this review were denied. At one point, we were told that the grant in question had not been awarded. Later we were told, after the actual selection of the United Farmworkers had been made, that GAO access to all grant-related materials was being denied in order to maintain the confidentiality of the negotiations. A week later our request for access was once again denied by the Director, Office of National Programs of the Employment and Training Administration, and a representative of the DOL Solicitor's Office. To break this impasse, we finally had to write to the Secretary of Labor setting forth our difficulties and views on the matter. It was not until five weeks later that the Secretary responded and gave us full access. As a result of this impasse our work was delaysd about two months.

3. On a number of occasions we have been denied access to records of military departments on sweeping and general grounds, such as the records are "internal working papers" that should not be released to the GAO or are not "official" agency documents. In one instance (February 1978) the Air Force refused to give us copies of certain briefing documents. The denial was based on the fact that the documents were prepared in connection with the Fiscal Year 1980 budget which had not gone to Congress.

These are not merely ad hoc denials made by lower level officials, but reflect formal agency policy guidelines which can serve to engender a negative approach to GAO access. For example, Air Force regulation 11–8 (10 February 1978) acknowledges GAO's statutory right of access but then prescribes detailed procedures for handling requests for sensitive information or denials of GAO requests. Concerning Air Force regulation 11–8, we have repeatedly contacted Air Force to share with them our concern over its unjustified restrictions on GAO access. We recently received from Air Force a draft of the new regulation. Our initial reaction to the draft is that Air Force is finally considering modifications to the regulation to accommodate our statutory rights and legitimate working needs, and to foster a positive working relationship between GAO and Air Force.

4. Even more recently (November 13, 1978) we were distressed to learn that the Deputy Assistant Secretary of Defense (Installations and Housing) issued guidelines sharply restricting access by non-Defense personnel to records regarding base closures. This instruction states that prior clearance by the Office of the Secretary of Defense will have to be obtained before giving materials to GAO staff. Like Air Force regulation 11–8, this instruction engenders a negative view of GAO records requests and could well serve to delay our ultimate receipt of requested documents.

5. Air Force regulation 11–8, referred to above, adversely impacted on our review of the EF–111A Tactical Jamming System. In that review we encountered serious delays and, in some cases, outright denials of our requests for access to records, based upon the regulation. In this instance, the Air Force refused to provide us with daily flight reports on the basis that the records were preliminary test reports

insulated from disclosure pursuant to paragraph 18k of regulation 11–8, and should not be released outside of DOD. Thus, while we visited EF–111A test sites, development and operational test officials would not give us any test results or even discuss them.

6. In connection with our review of the World Wide Military Command Control System (WWMCCS) we have experienced three types of access to records difficulties: outright denials of access to records; delayed access to records; and denial of access to principal responsible officials. The goal of this congressionally requested review is to access the ability of the WWMCCS system to satisfy military command and control requirements during a time of crisis. We began our task in early September 1978 when initial contact was made with the Office of the Joint Chiefs of Staff (JCS). In response to repeated written requests for access, JCS wrote that there were problems in releasing the requested information to GAO—in fact, that certain information was possibly not disclosable at all.

In summary, we have encountered outright denials of access as well as delays in getting documents. For example, one set of materials was not received until 36 days after our request; another records request took 44 days before we received the documents. And, in one case, over 100 days have elapsed and we still have yet to receive requested materials. Other documents have been denied on the basis they are "draft" documents since they were yet to be approved by JCS. The Command and Control Technical Center approved the "draft" on August 21, 1978, and the document is available to other U.S. Government agencies upon request.

We also have been flatly denied access to the comments of command participants during exercises. We sought these materials to see how the WWMCCS data processing systems supports the needs of the decision makers. On December 20, 1978, JCS told us the request was denied because the comments are considered internal documents and represent the opinion of the participants.

7. An access problem with NASA arose in July of 1978. Initially NASA would not grant us full access to the records of the NASA Council which we need to effectively perform two assignments. One of these assignments is a survey of NASA's planning and selection of projects to meet national needs. The other is to respond to a request from the Chairman, Subcommittee on Federal Spending Practices and Open Government, Committee on Governmental Affairs, to review civil agencies' progress in implementing OMB Circular A–109. NASA officials stated that they were reluctant to grant us full access to the records because they did not want to prematurely expose "pre-decisional material," and because of the need to preserve uninhibited freedom of expression by NASA personnel. In recognition of NASA's concerns we agreed to attempt performing our assignments with less than full access to needed records. We found that our restricted access to records was not satisfactory. In his letter of November 9, 1978, the NASA Administrator proposed a solution to GAO's problem under which NASA would (1) screen material prior to its release to GAO, and (2) withhold "informal" materials such as that prepared by "working-level" personnel if release of such would damage mechanisms for the internal communication of candid personal viewpoints.

By letter of December 12, 1978, we informed the NASA Administrator that his November 9 proposal was unacceptable. Our letter (1) reaffirmed GAO's right to examine planning and budgetary data, (2) explained GAO's policy of judicious handling of such data, and (3) rejected NASA's proposal that GAO accept information which had been screened. The letter also asked for a prompt resolution of all data requests made by GAO on the two assignments. We received a response by letter from the Administrator dated January 18, 1979, indicating that the requested documents would be provided. Although we ultimately obtained the materials in March 1979, we encountered a delay of about 9 months between our initial request and actual receipt of the materials.

Perhaps the most frequent delay situations we encounter, and the most difficult to deal with, are those in which it is unclear whether a real access problem even exists. We may get no specific response to a request for access within a reasonable time. Follow-up inquiries may elicit that the request is being processed through various channels within the agency or there may be vague allusions to "possible problems" which are under consideration. Unlike situations in which the agency at least articulates specific objections or concerns, we have nothing to respond to here in terms of attempting a resolution. In all probability the records will be provided eventually; but in the meantime assignments have been set back for unclear reasons or, perhaps, for no reason other than indifference or foot-dragging.

We anticipate that the existence of a judicial enforcement remedy would have a very substantial and beneficial impact on each type of delay discussed above. The deterrent effect alone should instill in agencies a greater sensitivity to the need for prompt responses to our access requests, thereby generally speeding up the process. It should also encourage agencies to quickly focus upon and articulate any real problems which do exist, so that they can at least be approached in a constructive manner.

We recognize that agencies may have sincere and legitimate concerns for the protection of sensitive information. We have always respected these concerns, and we have not hesitated to seek accommodations which afford maximum protection to the agency's information while assuring that our audit responsibilities are carried out effectively. Enactment of the judicial enforcement remedy would not change this fundamental approach. It would, however, effect more subtle changes by placing us on an equal footing with the agencies for purposes of negotiation. While this will probably result in some differences from current practice in the substance of access arrangements, we anticipate that the most significant effect will be to reduce substantially the time required for the negotiation process.

DIFFICULTIES WITH NON-FEDERAL ORGANIZATIONS

The previous discussion centers on our access experiences with Federal agencies and the anticipated effects of a judicial enforcement remedy. Generally, this discussion applies as well to access problems involving non-Federal organizations, such as contractors and grantees, and to the proposed subpoena authority which would provide the remedy here.

While cooperation is quite good as a general rule, access problems do arise in the form of challenges to GAO's legal authority, delays due to the informal resolution of stated issues, and delays involving uncertain factors. One possible difference in approach is that non-Federal organizations tend to be less familiar with GAO's functions and authorities. Issues are more likely to arise concerning the basis and scope of our legal access rights, and, in effect, our access rights are more varied than at the Federal level. Also, State laws and procedures may come into play.

As a result, we have encountered delays caused merely by the need to provide organizations—particularly grantees—with detailed statements of our authority. For example, the grantee (or its attorneys) may be entirely willing to cooperate, but may still insist on a formal statement of authority for its own protection in releasing information to us. Thus in a non-Federal context, the presence of a subpoena power on the statute books should be most useful as a means of avoiding access delays at the outset, particularly where the potential problem is lack of familiarity with GAO rather than a desire to resist.

At the risk of stating the obvious, our overriding interest in dealing with non-Federal organizations (as it is, of course, with Federal agencies) is to obtain the access necessary to accomplish our functions as promptly as possible. This can best be achieved by approaching such organizations in a nonadversary manner, but with the necessary legal remedies to support our access authority and evidence our ability to pursue access.

Our experience under title V of the Energy Policy and Conservation Act, 42 U.S.C. §§ 6381 et seq., illustrates the success of this approach. Title V grants GAO subpoena authority in the conduct of verification examinations of energy information. Since the statute was enacted in December 1975, we have obtained company information under title V from 68 different energy companies and conducted on-site audits of certain books and records of 32 companies. All of this has been accomplished without the need to issue a single subpoena. Some companies have been defensive about our involvement and sensitive about complying with our requests for information, especially where we sought proprietary or competitive data. Nevertheless, voluntary compliance has enabled us to obtain the necessary information to complete our reviews. We are convinced that the existence of our title V subpoena authority is, in large measure, responsible for these results.

Two title V reviews in particular illustrates the importance of having subpoena power. One involved a review of coal operators' books and records supporting coal reserve estimates on public lands. This review involved the top 20 leaseholders of Federal coal and required access to information which was of a very confidential and proprietary nature. Our requests initially drew resistance from several of the companies. Officials of several companies acknowledged that the only reason they would give us the information is because they knew that through our enforcement powers we would, in all likelihood, obtain it in the long run. In another instance, we requested access to management and financial information regarding the construction of the trans-Alaskan pipeline. Although Alyeska—the service company representing several major petroleum companies—never acknowledged our rights under title V, they did give us the information we requested.

Again, it appears, this was because of our enforcement powers and the company's interest in avoiding a court battle.

GAO was also given subpoena power relating to social security programs by the Medicare-Medicaid Antifraud and Abuse Amendments, 42 U.S.C. § 1320a–4. We have not developed as much experience under this subpoena provision. We believe that it will prove to be equally useful. Likewise, we are confident that affirmative results could be obtained if GAO is provided general subpoena power to enforce its existing access rights by law or agreement to records of non-Federal organizations.

APPENDIX C

CONGRESS OF THE UNITED STATES,
COMMITTEE ON FOREIGN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 8, 1979.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations,
Rayburn Office Building, Washington, D.C.

DEAR JACK: I write concerning H.R. 24, which has just been reported out of the Committee on Government Operations. I hope that this legislation will prove useful and serve the purpose of improving the General Accounting Office's (GAO) access to executive branch documents.

I would like to bring to the attention of your committee a recent experience I have had with a GAO investigation. In May 1978, I requested the GAO to prepare a study on the foreign military sales decisionmaking process. During the course of its inquiry, GAO experienced a series of problems in obtaining access to relevant information from the executive branch. According to the GAO, the State Department was reluctant to discuss, or give GAO access to, any memoranda or documents which revealed internal positions, policy options and other information relating to the decisionmaking process.

In hearings and correspondence with the Department of State over the past six months, the State Department has persisted in its claim that the statutes governing GAO access to Department records do no provide for unqualified access to records and papers related to policy formulation and implementation and that such unqualified access is limited only to records relating to the expenditure of funds and requested in the course of GAO financial audits.

An attached memorandum prepared for the Subcommittee on Europe and the Middle East by the American Law Division of the Congressional Research Service, states that 31 USC 54 does not differentiate between factual information and materials related to policy formulation and implementation. The memorandum also states that while such materials may be internal policy memoranda this fact does not automatically disqualify them from coverage under that provision. The memorandum indicates that Congress has long viewed the Comptroller General's access authority in the broadest context, allowing him access to information not directly concerned with the expenditures of funds.

As you know, the problem of GAO access to executive branch information is long-standing. While there may be no need to modify 31 USC 54, more effective enforcement mechanisms may be appropriate to insure that GAO can fulfill its investigative responsibilities for the Congress. The CRS memorandum states that

> the general access provisions of 31 USC 54 or the access implicit in the statutes granting GAO various review and oversight powers are sufficient; what is needed is a way to enforce them.

H.R. 24 addresses the crucial need for an enforcement mechanism by granting the Comptroller General the right to enforce his right to access to records through the courts.

I would appreciate your making my concerns, as expressed in this letter, and the CRS memorandum, part of the committee's record or report on the bill. If appropriate, I am prepared to provide specific report language or any other material that the committee desires.

With best regard.

Sincerely yours,

LEE H. HAMILTON,
Chairman, Subcommittee on Europe and the Middle East.

Enclosure.

APRIL 25, 1979.

To: House Foreign Affairs Committee.
From: American Law Division.
Subject: GAO Access to State Department Records.

Enclosed please find a report on GAO access to executive branch information.

The report was prepared in response to your request for an analysis of the scope of 31 U.S.C. 53, an access-to-records provision, and the State Department's reliance on that statute as authority to deny access to GAO. The precise nature of the documents sought and the particular investigative interest of the GAO was not discussed. The report thus speaks in general terms regarding the scope of GAO access to information. If further analysis is desired, please contact us.

RICHARD EHLKE,
Legislative Attorney.

GAO ACCESS TO EXECUTIVE BRANCH INFORMATION

The General Accounting Office has been denied access by the State Department to documents relating to arms sales. In response to a question from a member of Security and Scientific Affairs, a department representative supplied the following authority for denying information to GAO:

> The statutes governing GAO access to departmental records (31 U.S.C. sec. 54) extend only to provide unqualified access to records relating to the expenditure of government funds in the course of financial audits conducted by the GAO. The history and context of section 54 make clear that it was not intended to provide such unqualified access to records and papers related solely to policy formulation and implementation. Thus, while the Department's firm policy is to cooperate as fully as possible with the GAO surveys and studies of United States Government policies and their execution, it is our policy to safeguard appropriately access to internal memoranda reflecting individual, bureau, and agency views and recommendations leading to final policy decisions.

31 U.S.C. 54, part of the Budget and Accounting Act of 1921, provides that

> All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 107 of this title.

On its face, the provision's language is not limited to "records relating to the expenditure of government funds in the course of financial audits" but embraces records regarding the "power, duties, activities, [and] organization" of the various departments and establishments of the executive branch. The term "activities" arguably envisions more comprehensive review of agency records by GAO than would normally be encompassed within a traditional financial audit.[1] Furthermore, the provision does not differentiate between factual information and "records and papers related solely to policy formulation and implementation". Thus, even if 31 U.S.C. 54 is limited to records relating to the expenditure of government funds sought in the course of a financial audit, the fact that the records are internal policy memoranda does not automatically disqualify them from coverage if relevant to the purpose of the access provision.

It is true that 31 U.S.C. 54 was part of the original 1921 Budget and Accounting Act, enacted at a time when GAO's and the Comptroller General's functions were conceived to be narrower than they are today.[2] However, legislation enacted in the supervening 50 years has greatly expanded the role of GAO. The Legislative Reorganization Act of 1946, 31 U.S.C. 60, authorizes the Comptroller General to "make an expenditure analysis of each agency in the executive branch of the Government (including Government Corporations), which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended." The Legislative Reorganization Act of 1970 and the Congressional Budget and Impoundment Control Act of 1974 added duties to GAO which solidified its position as an arm of the Congress in matters extending beyond financial auditing. Pursuant to 31 U.S.C. 1154, the Comptroller General is to "review and evaluate the results of Government programs and activities carried on under existing law . . ." GAO was thus to be "the principal supplementary staff for assistance to committees in their analysis of existing agencies and ac-

[1] See, Morgan, The General Accounting Office: One Hope for Congress to Regain Parity of Power With the President, 51 N.C.L. Rev. 1279, 1353 (1973). Morgan cites floor debates on the Budget and Accounting Act of 1921 indicating that the power of the Comptroller General to "investigate . . . all matters relating to the receipt, disbursement, and *application* of public funds . . ." (31 U.S.C. 53. Emphasis supplied.) was intended to permit GAO review of agency efficiency as well as financial integrity. 51 N.C.L. Rev. at 1353 n. 273, citing, 58 Cong. Rec. 7292–3 (1919).

[2] But see, note 1, supra. The evolution of the GAO from an agency doing "desk audits" to one engaged in more comprehensive auditing and review activities is described by the Acting Comptroller General in hearings on the Legislative Reorganization Act of 1970. Hearings on the Organization of Congress Before the Joint Committee on the Organization of the Congress, 89th Cong., 1st sess. 1363, 1364–1369 (1965).

tivities" and was envisioned as "an arm of the Congress in examining and analyzing the activities of existing Federal programs and in the budget evaluation process generally." [3] The 1974 Congressional Budget Act expanded GAO's role in assisting committees with their program evaluation and oversight function.[4]

Thus, GAO not only performs traditional fiscal audits, but conducts so-called management audits and program evaluation and analysis. It defines the term "audit" as including more than just verification of accounts, transactions, and financial statements but as a concept which also embraces "[c]hecking for compliance with applicable laws and regulations; examining the efficiency and economy of Government operations; and determining the extent to which the desired results have been achieved." [5] This description of GAO's functions comports with its statutory mandates and is reffected in the tasks assigned to it by committees of Congress.

While the duties and responsibilities of the GAO have been expanding, the access-to-records provision, 31 U.S.C. 54, has remained untouched. Periodic controversies—similar to the one in question—have arisen over the sufficiency of the authority in 31 U.S.C. 54 to procure records and information from agencies in the course of the GAO's expanded review and evaluative responsibilities. However, several arguments can be made that the GAO does have broad authority, under 31 U.S.C. 54 or other statutes, to gain access to agency records. As discussed above, the language of the access provision can be interpreted to encompass more than merely factual financial information needed for a fiscal audit. In addition, the Comptroller General argues that access necessary to achieve the statutory directive is implicit in the new authorities vested in the GAO.[6] Congress has not felt the need to revise 31 U.S.C. 54 or provide new access authority every time it has given the GAO new oversight responsibilities or when disclosure problems have arisen.[7]

The consistent interpretation by the Comptroller General of the breadth of the access provision is entitled to great weight as an administrative interpretation, particularly when such interpretation has been voiced before Congress which has chosen not to revise it.[8] The Comptroller General has frequently aired his problems in getting access to agency records before congressional committees. The response has not been calls to amend 31 U.S.C. 54 to cover the records sought, but to provide effective enforcement mechanisms to enable GAO to

[3] H. Rept. No. 91–1215, Legislative Reorganization Act of 1970, 91st Cong., 2d sess. 18, 81 (1970).

[4] See, S. Rept. No. 93–924, 93d Cong., 2d sess. 72 (1974).

[5] Hearing on Review of the Powers, Procedures, and Policies of the General Accounting Office Before a Subcommittee of the House Government Operations Committee, 94th Cong., 1st sess. 5 (1975) (testimony of Comptroller General Staats).

[6] See, Hearings on Defense Production Act Amendments of 1972 Before the Senate Committee on Banking, Housing and Urban Affairs, 92d Cong., 2d sess. 52 (1972) (Memorandum on Right of the Comptroller General and the General Accounting Office to Have Access to the Records of the Emergency Loan Guarantee Board).

[7] Where rights to access to non-government records are involved, GAO access has frequently been spelled out since the general authority of 31 U.S.C. 54 extends only to departments and establishments of the executive branch. See, e.g., 15 U.S.C. 771 (energy information). There are numerous statutory provisions specifically giving the GAO access to records of recipients of various types of Federal financial assistance. See, 42 U.S.C. 1857; 19 U.S.C. 1918; 42 U.S.C. 4592; 45 U.S.C. 722. Specific GAO access authority may also be spelled out with respect to independent establishments. See, 7 U.S.C. 12–3 (Commodity Futures Trading Commission). See also, Hearings supra note 6 at 56.

[8] See, *Eli Lilly & Co.* v. *Staats*, 574 F. 2d 904 (7th Cir.), cert. denied, 99 S. Ct. 362 (1978). The case involved GAO access to the records of government contractors pursuant to special access provisions and contract clauses. While 31 U.S.C. 54 was not in issue, the court justified GAO access on the basis of not only the terms of the particular access provisions in question but also the broad investigatory powers of the Comptroller General to "investigate . . . all matters relating to the receipt, disbursement, and application of public funds . . ." contained in 31 U.S.C. 53. 574 F. 2d at 910.

effectuate its access rights. The assumption has been that the general access provisions of 31 U.S.C. 54 or the access implicit in the statutes granting GAO various review and oversight powers are sufficient; what is needed is a way to enforce them.

For example, the Comptroller General's memorandum outlining his legal authority to gain access to the records of the Emergency Loan Guarantee Board was submitted before the Senate Banking, Housing and Urban Affairs Committee in 1972. Problems of GAO access to foreign affairs and military information were aired extensively in Congress in 1973. In response to the documentation of denials of access to GAO, provisions to cut off funds if access was not provided were attached State Department and United States Information Agency appropriations authorization bills.[9] The focus of concern was not whether existing law provided sufficient authority to gain access to the records being sought by GAO, but what enforcement mechanism was appropriate. The fund cut-off provision of the State Department bill was not enacted, largely on procedural grounds.[10] The USIA provision, however, was passed, but the President vetoed it and he was sustained in the Senate.[11]

A bill to revise and restate certain functions of the Comptroller General was also introduced in 1973.[12] It would have amended 31 U.S.C. 54, not to provide additional access authority, but to clarify current statutory language.[13] The bill would have deleted the modifier "financial" to the word "transactions" and the term "methods of business". 31 U.S.C. 54 would then have provided access to "information regarding the powers, duties, organization, transactions, operations, and activities . . ." [14]

Senator Percy, a cosponsor, emphasized his view of the clarifying nature of the proposed amendment:

> [The amendment], I am assured by GAO counsel, does not provide the GAO with additional access authority. It largely restates [31 U.S.C. 54]. A comparison of the new language versus the old is attached. If anything the new language, by striking the term "financial" . . . would appear to have a weakening effect. In fact, it is to escape the excessively restrictive construction of "financial transactions" by Federal agencies that the word "financial" is deleted.[15]

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[9] See, 119 Cong. Rec. 19627 (June 14, 1973). A report on GAO Access to Records Problems Encountered in Making Audits of Foreign Operations and Assistance Programs appears in 119 Cong. Rec. 19631–19637. Internal memoranda and working papers were frequently the subject of controversy. Id. at 19630.

[10] See, 119 Cong. Rec. 29235, 33577–8 (1973).

[11] 119 Cong. Rec. 33579, 35071, 35428–33.

[12] S. 2049, 93d Cong., 1st sess.

[13] See, 119 Cong. Rec. 20656, 20662 (June 21, 1973).

[14] 119 Cong. Rec. 20659.

[15] Hearing on Improving Congressional Control of the Budget Before the Subcomm. on Budgeting, Management, and Expenditures of the Senate Government Operations Committee, 93d Congress, 1st session, pt. 3 at 7 (1973). The Comptroller General also viewed the amendment as essentially restating present law. Id., 40. See also, Id., 27–33 for a description of GAO access problems in a variety of situations.

S. 2049 was not reported from committee. Senator Percy proposed to offer the access amendment as a provision of the Congressional Budget Act. It did not appear in the reported versions of the 1974 Act.

Amendments to 31 U.S.C. 54 were also proposed in 1976 and 1977 to deal with a specific problem of GAO access to FBI records. The sponsors emphasized their belief that GAO already possessed the access authority, but felt that clarifying legislation was necessary in the face of repeated challenges by the Attorney General. The bills would have added to the end of 31 U.S.C. 54 the declaration that with respect to the Department of Justice and its divisions, the access provision is applicable to audits, reviews and examinations conducted by GAO pursuant to 31 U.S.C. 65–7 and 31 U.S.C. 1154 and extends to all records and not only those pertaining to receipt, disbursement, or application of public funds. See, 122 Cong. Rec. H2280 (daily ed., Mar. 23, 1976); 123 Cong. Rec. E3146 (daily ed., May 19, 1977).

Oversight hearings in 1975 portrayed GAO in broad terms. Access problems were not the focus of the hearings, but the Chairman of the House Government Operations Committee described GAO as "far more than just an auditor. It serves as a vital resource of the Congress by obtaining, analyzing, and presenting through its audit, review, and reporting activities, information necessary to enable the Congress to legislate more effectively." [16] The same committee reported a bill in 1978 which would have granted the Comptroller General the right to enforce his right to access to records in court.[17] In its report, the Committee emphasized its view that GAO was entitled to all records necessary to perform its various functions: [18]

> A principal duty of GAO is to make independent audits of agency operations and programs and to report to the Congress on the manner in which Federal departments and agencies carry out their responsibilities. In establishing GAO, Congress recognized that the Office would require complete access to the records of the Federal agencies. This need would not be fulfilled if GAO's access to records, information, and documents pertaining to the subject matter of audit or review is limited. The intent of the various laws assigning authority and responsibility to the GAO is clear on this point.

Elsewhere, the Committee confronted the recurring argument that GAO access does not extend to opinions as opposed to factual information: [19]

> Other sources have raised the concern that tying section 3 to 31 U.S.C. 54 could have the effect of restricting the Comptroller General's authority to obtain data from Federal agencies through court enforcement. The Comptroller General relies upon section 54 as his principal authority to support requests for information from Federal agencies. It is couched in terms of the agencies' obligation to furnish "information" to the Comptroller General. Some agencies have attempted to withhold material from him on the basis that "information" means "factual information only" and does not include opinions, conclusions, conjectures, recommendations, and similar matter. Such an interpretation is clearly erroneous. Section 54 gives the Comptroller General the right to examine the "books, documents, papers, or records" of an agency. Section 54 should be given the broadest meaning possible in order that the Comptroller General will have the right of access to all those records he needs to fulfill the GAO's statutory responsibilities. The same breadth of coverage also is intended to apply to the right of court-enforced access to information conferred under section 3. This position is reinforced by the fact that Section 3 speaks in terms of 31 U.S.C. 54 or "any other

[16] Hearing on Review of the Powers, Procedures, and Policies of the General Accounting Office Before a Subcommittee of the House Government Operations Committee, 94th Congress, 1st session 2 (1975).
[17] H. Rept. 95–1586, 95th Congress, 2d session (1978).
[18] Id., 5.
[19] Id. 8. The bill passed the House on Oct. 3, 1978. 124 Cong. Rec. H11360 (daily ed.). See, Hearings on Strengthening Comptroller General's Access to Records Before a Subcommittee of the House Government Operations Committee, 95th Congress, 2d session (1978).

provisions of law or agreement granting the Comptroller General a right to access" to material in the possession of a Federal agency.

Thus, the problems of GAO access to executive agency records and the arguments surrounding the scope of its authority to obtain information have been before the Congress several times in recent years. The position that GAO is limited to financial auditing of executive agencies and that its access to information is restricted to factual, fiscal, data has not been embraced by Congress. When informed of access difficulties, the focus of congressional debate has not been on the underlying authority of the GAO or the propriety of its requests but on the need for mechanisms to enforce the right of access. This long-standing congressional acceptance of the broad interpretation given his access authority by the Comptroller General, combined with the literal scope of not only 31 U.S.C. 54 itself, but the other statutory directives to GAO, would seem to refute the argument that policy-making information not directly concerned with expenditure of funds is outside the Comptroller General's access authority.

With respect to the instant controversy, the State Department appears to be basing its refusal to provide information to GAO on its interpretation of the statutory language and context of 31 U.S.C. 54. Excutive privilege has not been asserted and this report does not address the question of GAO access in the face of a claim by the executive branch of executive privilege.

RICHARD EHLKE,
Legislative Attorney.

APPENDIX D

Federal Department, Agencies, Offices, Commissions, and Independent Establishments with authority to issue and sign subpoenas

Agency activity:	*U.S. Code*
Agriculture (Department of):	
Pesticides and environmental pesticide control	7 U.S.C. § 136d
Packers and stockyards	7 U.S.C. § 222
Perishable agricultural commodities	7 U.S.C. § 449m
Tobacco inspection	7 U.S.C. § 511n
Seed inspection	7 U.S.C. § 1603
Cotton research and promotion	7 U.S.C. § 2115
Potato research and promotion	7 U.S.C. § 2622
American Indian Policy Review Commission	25 U.S.C. § 174 note
Civil Aeronautics Board	49 U.S.C. § 1484
Civil Rights Commission	42 U.S.C. §§ 1975 1975d
Civil Service Commission:	
Political activities of State and local employees	5 U.S.C. § 1507
Enforcement of Voting Rights Act of 1965	42 U.S.C. § 1973g
Commerce (Department of):	
Weather modification	15 U.S.C. § 330c
Flammability standards	15 U.S.C. § 1193
Interstate land sales	15 U.S.C. § 1714 (c)
Shrimp fisheries log books	16 U.S.C. § 1100b-5
Port safety	33 U.S.C. § 1223
Shipping	46 U.S.C. § 1124
Commission on Security and Cooperation in Europe	22 U.S.C. § 3004

Federal Department, Agencies, Commissions, and Independent Establishments with authority to issue and sign subpoenas—Continued

	U.S. Code
Consumer Products Safety Commission:	
Hazardous substances	15 U.S.C. § 1262 note
General	15 U.S.C. § 2076
Council on Wage and Price Stability	12 U.S.C. § 1904 note
Detention Review Board	50 U.S.C. § 819
Energy (Department of):	
General	Pub. L. No. 95–91, title VI. § 645
Powers of Secretary (formerly powers of Federal Energy Administration)	15 U.S.C. § 772
Administration of Atomic Energy Act (formerly Energy Research and Development Agency)	42 U.S.C. § 5814 (42 U.S.C. § 2201 (c))
Consumer Products (formerly Federal Energy Administration)	42 U.S.C. § 6299
Environmental Protection Agency:	
General	33 U.S.C. § 1369
Noise Control Act	42 U.S.C. § 4915
Equal Employment Opportunity Commission	42 U.S.C. § 2000e–9
Federal Communications Commission	47 U.S.C. § 409
Federal Home Loan Bank Board	12 U.S.C. § 1464(d)(9)
Federal Maritime Commission	46 U.S.C. § 1124
Federal Metal and Non-Metallic Mine Safety Board	30 U.S.C. § 729(i)
Federal Paperwork Commission	44 U.S.C. § 3501 note
Federal Power Commission:	
Natural gas companies	15 U.S.C. § 717m
Water power	16 U.S.C. § 825f
Federal Savings and Loan Insurance Corporation	12 U.S.C. § 1730a (h)
Federal Trade Commission:	
General	15 U.S.C. §§ 45, 49
Consumer products	42 U.S.C. § 6302
Foreign Claims Settlement Commission:	
Foreign claims	22 U.S.C. § 1623
War Claims Settlement	50 U.S.C. (App.) § 2001
General:	
Secretary of Department for which Coast Guard is operating (investigations of safety and environmental quality of ports, harbors, and navigable waters)	33 U.S.C. § 1223
Secretary of Department administering Export Regulation Act	50 U.S.C. (App.) § 2406
General Accounting Office:	
Department of Energy Organization Act and Federal Energy Administration Act of 1974 (upon the adoption of a resolution by the appropriate congressional committee)	Pub. L. 95–91, title II, § 207, 91 Stat. 565, 574,; 15 U.S.C. § 7
Energy Policy and Conservation Act	42 U.S.C. §§ 6382, 6384
Medicare-Medicaid Antifraud and Abuse Amendments	42 U.S.C. 1320A–1
Health, Education, and Welfare (Department of):	
Old-age survivors and disability insurance benefits	42 U.S.C. § 405(d)

Federal Department, Agencies, Commissions, and Independent Establishments with authority to issue and sign subpoenas—Continued

	U.S. Code
Housing and Urban Development (Department of):	
Interstate land sales	15 U.S.C. § 1714
Discriminatory housing practices	42 U.S.C. § 3611
Immigration and Naturalization Service:	
Immigration	8 U.S.C. § 1225
Naturalization	8 U.S.C. § 1446(b
Indian Claims Commission	25 U.S.C. § 70q
Interior (Department of):	
Coal mines	30 U.S.C. § 813
Public lands	43 U.S.C. § 102
Internal Revenue Service	26 U.S.C. §§ 7602–7603
Interstate Commerce Commission	
Explosives transport	18 U.S.C. § 835
Common carriers	49 U.S.C. §§ 12, 46
Motor vehicles	49 U.S.C. § 305(d)
Joint Federal-State Land Use Planning Commission for Alaska	43 U.S.C. § 1619 (d)
Labor (Department of):	
Workmen's compensation	5 U.S.C. § 8126
Farm labor contractors	7 U.S.C. § 2046
Fair labor standards	29 U.S.C. § 209
Longshoremen	33 U.S.C. § 927
Government contracts	41 U.S.C. § 39
Law Enforcement Assistance Administration	42 U.S.C. § 3754
National Commission on Electronic Fund Transfers	12 U.S.C. § 2404 (d)
National Credit Union Administration:	
Examination of insured credit unions	12 U.S.C. § 1784
National Labor Relations Board:	
Determination of bargaining units; investigations into the fairness of elections; and unfair labor practices	29 U.S.C. § 161
National Mediation Board:	
Mediating disputes between carriers and their employees	45 U.S.C. § 157
Pension Benefit Guaranty Corporation	29 U.S.C. § 1303
President:	
Enforcement of Defense Production Act	50 U.S.C. (App.) § 2155
Railroad Retirement Board:	
Railroad unemployment insurance claims	45 U.S.C. § 362
Securities and Exchange Commission:	
Security Exchange Act	15 U.S.C. §78u
Public utility holding companies	15 U.S.C. § 79r
Investment companies	15 U.S.C. § 80a–41
Small Business Administration:	
Assistance recipients	15 U.S.C. § 634
Investment company licensing	15 U.S.C. §§ 687a, 687b
Tariff Commission	19 U.S.C. § 1333
Technology Assessment Board	2 U.S.C. § 473
Transportation (Department of):	
Safety standards	15 U.S.C. § 1401
Tolls in navigable waters	33 U.S.C. § 506
Transportation Safety Board	49 U.S.C. § 1903(b)
Treasury (Department of):	
Marijuana investigations	21 U.S.C. §§ 198a, 198b, 198c
Enforcement of narcotics laws	31 U.S.C. § 1034
U.S. Railway Association	45 U.S.C. § 713

Federal Department, Agencies, Commissions, and Independent Establishments with authority to issue and sign subpoenas—Continued

	U.S. Code
War Production Board:	
Audits of defense contractors	50 U.S.C. (App.) § 643a
Procurement and repair of naval vessels	50 U.S.C. (App.) § 1152
EXPIRED AUTHORITY	
Commission on Consumer Finance	15 U.S.C. § 1601 note
Commission on Food Marketing	7 U.S.C. § 1621 note
Commission on the Organization of the Government for the Conduct of Foreign Policy	22 U.S.C. § 2824
Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance	18 U.S.C. § 2510 note
Commission on the Review of the National Policy toward Gambling	18 U.S.C. § 1955 note
Public Land Law Review Commission	43 U.S.C. § 1398
Subversive Activities Control Board:	
Investigations on communist-action-front groups or infiltrated organizations [1]	50 U.S.C. § 792
Transportation (auto insurance investigation)	49 U.S.C. § 1653 note

[1] The Board's funding ceased on June 30, 1973. See 50 U.S.C.

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